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THE REFERENDUM AND INITIATIVE IN MICHIGAN

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Michigan Constitutional Convention, 1907-8.

To those who consider the Oregon plan of the initiative and referendum as the ideal and perfect form of direct popular legislation, there may seem little occasion for giving any attention to the State of Michigan in a study of this method of direct democracy. The provisions in the constitution of 1908 for the popular initiative of constitutional amendments and a referendum on acts of the legislature are limited and restricted in comparison with those of Oregon; and thus far the method of proposing amendments has not been called into operation. Nevertheless, Michigan is a state which has in the past made an extensive use of the popular referendum on constitutional amendments and some other measures; and its experience in this field throws light on the value of this procedure. Moreover the process by which the provisions of the new constitution were formulated serves to illustrate some of the problems of constructive legislation; and the provisions themselves are of interest as an attempt to meet some of the criticisms on the Oregon plan.

The Referendum, 1835-1908

The first State Constitution of Michigan, adopted in 1835, was submitted to popular ratification, at a time when such a referendum was becoming common, but before this practice had been definitely established throughout the United States. This constitution also provided that amendments thereto should be submitted to popular vote; and further contained what was then a novel provision authorizing the legislature to submit to popular vote a proposal for a convention "to revise or change this entire constitution."

Few referendum votes were taken under the provisions of this constitution. In 1849 an amendment was submitted and adopted making the judges of the supreme court elective; and a year later a constitutional convention was called. The second constitution, of

1850, was also submitted to popular vote and adopted. This constitution repeated the provisions of the first for a popular referendum on constitutional amendments and on proposals for calling a convention to revise the constitution; and further provided that general banking laws must be submitted to a vote of the electors. In the case of constitutional amendments and general banking laws a majority only of those voting on each proposition was required; but in the case of proposals for a constitutional convention a majority of those voting at the election was necessary.

Under these provisions no less than eighty-five separate propositions were submitted to popular vote in Michigan from 1850 to 1908. Most of these were constitutional amendments; but on two occasions general banking laws were referred to popular vote, seven times a proposal to call a constitutional convention was submitted, and three revised constitutions have been placed before the people.

The number of propositions submitted have been fairly well distributed throughout the period. From 1858 to 1868 there were fourteen proposals referred to popular vote; and in the subsequent decades the number of propositions ranged from sixteen to nineteen. Generally two or three measures have been proposed together; and the largest numbers at one election were five in 1862 and six in 1870.

Some noticeable differences are, however, shown in the date of submitting proposals and in the results of the popular vote. Up to 1886 referendum measures were usually submitted at the November general elections. Since 1886, two-thirds of the propositions have been voted on at regular or special elections in April.¹ Of the measures submitted up to 1866 all but one were adopted; but of the thirty-five popular votes during the next twenty years, only twelve were favorable; while during the next two decades there has been an increasing tendency to approve the proposals: from 1889 to 1899, nine proposals were adopted and twelve were defeated; from 1900 to 1908, fifteen proposals were approved and only three have failed. The later years thus show a decided increase in popular approval of proposed changes, which culminated in the adoption of the revised constitution of 1908 containing a large number of important alterations in the fundamental law of the state.

¹ Regular state elections are held in April of odd numbered years for judges of the supreme court and regents of the university.

Of more importance is the question as to the degree of popular interest shown in the questions submitted. A comparison of the number of votes on these questions with the total number of votes cast at the same elections offers some evidence on this point. This shows a large range both in the number of votes and in the percentage of votes at the election. The smallest degree of interest is indicated on the five measures submitted in 1862, when the vote for and against these measures ranged from 4,463 to 6,711, or from less than four per cent to barely five per cent of the vote of 130,818 cast for governor at the same time. Such a vote clearly cannot be taken as indicating any popular opinion on the questions submitted.

On the other hand the largest vote was that on an amendment changing the method of assessing and taxing the property of corporations, submitted in November, 1900, on which a total vote of 497,485 was cast, more than ninety per cent of the vote for governor at a presidential election. Here the popular interest was manifest; and the result of the vote was decisive—nearly nine to one in favor of the proposed amendment.

In most cases, however, the vote on measures referred to the people has ranged from forty to sixty per cent of the total vote cast at the election; and the affirmative vote has usually been less than half of the total vote at the election. In a number of cases the vote on measures has been less than twenty per cent of the total vote at the election. In several others, the vote on measures has approached seventy per cent of the total vote at the election. In a few cases where propositions have been submitted at a special election, the vote has of course equaled the total vote at the election; but has been in such cases usually not more than fifty per cent of the vote cast at a general November election.

An examination of the Michigan figures fails to show any evidence that the size of the vote has been affected to any large degree by changes in the method of balloting, as has been the case in Illinois.² In recent years all measures submitted to popular vote have been voted on special ballots distinct from those containing the names of candidates for office; and this arrangement has served to call the attention of voters to the proposals. On the other hand, with the exception of the revised constitution of 1908, no special efforts have

² C. O. Gardner, "The Working of the State-wide Referendum in Illinois." *American Political Science Review*, v, 394 (1911).

been made to acquaint the voters with the precise nature of the proposals. The statements on the ballots have usually been vague and indefinite; and in few cases had there been any active discussion of the measures submitted.

Under these circumstances, the number of votes cast on many of these proposals has been larger than might be expected; and indeed on some measures of little or only local importance the number of votes has been so much larger than any evident public interest in the question, as to indicate a practice on the part of many voters of voting indiscriminately for or against all measures submitted to popular vote. Thus the considerable number of proposals relating to circuit courts and boards of auditors applied only to particular counties, and could have had no general interest throughout the state. Yet on such measures a vote of about fifty per cent of the total vote of the state was ordinarily cast.

In spite of the considerable vote cast even on minor questions, it is worth noting that very few proposals would have been adopted if it had been necessary to secure a majority of all the votes cast at the election, as is required in Illinois and some other states. No less than forty constitutional amendments adopted by a majority of those voting on each question would have failed if the Illinois requirement had been in force. Only six of the amendments adopted received a majority of the vote cast at the election; and three of these were measures submitted at special elections in 1878 and 1880. The three amendments receiving such a majority at regular elections were those relating to soldiers voting (in 1866), the taxation of corporations (in 1900) and public wagon roads (in 1905).

Even the revised constitution of 1908, which received a majority of 114,000 votes, would have failed if a majority of all voting at the election had been required.

On the question of calling a convention to revise the constitution, where a majority of those voting at the election is required, this provision served to prevent the calling of a convention on three occasions (1892, 1898 and 1904), on two of which there was a considerable majority of a fairly representative vote in favor of a convention.³ The proposal in fact did not carry until submitted at a

³ In 1866 the vote in favor of calling a constitutional convention was slightly less than a majority of the vote cast at the election; but the convention was held, only to have its revision of the constitution rejected.

special election, in 1906, when the vote on the question was the same as the total vote at the election.

Michigan's experience with the referendum suggests certain conclusions which should be applied in any plan for the further use of such popular votes on public questions. In the first place much of the detail in state constitutions or laws submitted to popular vote should be eliminated, so as to avoid the necessity for proposing amendments on matters not likely to arouse public interest. Secondly, more care should be taken to acquaint the voters with the content and purpose of measures submitted to popular vote. Thirdly, there should be a requirement of a certain minimum vote in order to carry referendum proposals; but this requirement should be less than a majority of all voting at the election. It will be noted in the following paragraphs, that these lessons were to some extent considered in framing the provisions relating to the initiative and referendum in Michigan's recent constitutional convention.

The Constitution of 1908

In the Michigan Constitutional Convention of 1907-08 the question of direct legislation, in the form of the popular initiative on constitutional amendments, aroused more interest and discussion than any other; and a survey of this discussion and its results will throw some light on the process of developing a general principle of policy into a formulated enactment. In the steps leading up to the constitutional convention there had been some attention given to the initiative and referendum. The State Grange and some labor organizations had endorsed this proposal; and efforts had been made to secure pledges from candidates for delegates to the convention. But the small vote cast at the election of delegates and the close division of opinion among the delegates elected indicated the absence of intense popular sentiment on this question, in marked contrast with the almost unanimous sentiment of the convention on the question of municipal home rule.

Among the members of the convention three main groups could be recognized in reference to the initiative and referendum. A considerable number, but distinctly less than a majority, were in favor of substantially the Oregon plan of direct legislation. On the other hand, almost half the delegates were opposed to any step in this direction. Between these were a number of moderates,

favoring some method for direct popular action, but desirous of devising a plan which would obviate the dangers of hasty and ill-considered measures.

Under these conditions, even the more radical members waived their extreme proposals, and concentrated their energy on a restricted plan for proposing constitutional amendments by popular petition. As the result of several informal conferences, a proposal was drafted for proposing amendments by petition of twenty per cent of those voting at the preceding election, to be submitted at a regular election not less than ninety days after the required petition was filed, and to require for adoption a vote of not less than one-third of that cast at the election. In this form, the proposal was reported by a majority of the committee. On a motion to strike out the whole proposal a four days' debate took place, in which more than half the delegates took part, and the whole question was thoroughly discussed.

During the debate, a substitute proposal was presented. This provided that signatures to petitions should be verified by registration or election officials, required the submission of proposed amendments to the legislature, and provided for voting on alternative proposals on the same subject. This substitute was at first strongly opposed by the more radical delegates; but after the failure of a special conference committee to reach a compromise, the substitute was accepted and passed at the end of the debate in committee of the whole, but by a close vote and with less than the majority of the whole convention which was necessary to secure final adoption.

In the interval of about a week before second reading, further changes were suggested and discussed outside of the formal meetings of the convention; and the final test votes were between two new substitutes, each containing changes from the proposal previously voted. One of these contained a clause providing that the legislature in joint session might prevent submission to popular vote of an amendment proposed by popular petition. The other omitted the legislative veto, but contained additional restrictions. Both proposals were indeed so well safeguarded that action under either would be difficult. On second reading, the provision including the legislative veto was adopted, with the support of some of the moderates.

As finally adopted the section provides that amendments to the constitution may be proposed by petition of the electors, verified by registration or election officers; and when petitions for an amend-

ment are presented signed by twenty per cent of the vote cast for secretary of state, the proposed amendment must be submitted to the electors, unless disapproved by a majority of the legislature in joint session. When an amendment is proposed by petition, an alternative or substitute proposal may be submitted by a joint majority vote of the legislature. For adoption, such proposed amendments must receive an affirmative vote equal to one-third of the vote cast at the election.

This form of the initiative may be said to recognize the demand for more direct popular action in determining important questions of government; and in spite of the conditions, it should make possible constitutional changes for which there is a strong popular support. But it is undoubtedly difficult to secure the adoption by this process of a proposal urged only by a small minority, as is possible under the Oregon system. In regard to the restrictive conditions, it seems to the writer that the requirements for a twenty per cent petition, for verification of signatures, and for a one-third vote are each justifiable, taken separately, as a means of securing adequate evidence of popular support. But it may be admitted that in combination they offer a very serious obstacle; and that with proper verification of signatures and an adequate vote for adoption the percentage of petitioners might safely be reduced. It may be noted, however, that all the later proposals on this subject before the Michigan convention contained all of these restrictions.

The most vigorous opposition on the part of the pronounced advocates of direct legislation was aroused by the possible legislative veto, which in form conflicts with the theory of direct popular action. To the writer, it seems—as it did in the convention—that its practical effect is of relatively little significance. The legislative disapproval must be openly expressed by a clear majority of all the members; and indeed a majority of either house in favor of the proposal by refusal to go into joint session could prevent disapproval by a larger majority opposed to it in the other house. Under these conditions, legislative disapproval of any amendment which complied with the other conditions seems very improbable.

The provision for alternative proposals recognizes a situation which would be likely to arise wherever measures proposed by popular petition must be presented to the legislature before submission to popular vote, as is provided in several plans now proposed, *e. g.* in

Wisconsin and Ohio. Unless methods are provided for dealing with such alternative proposals, it would easily be possible to confuse the electors and defeat any measure proposed by submitting one or more additional measures on the same subject at the same time.

Thus far no amendment has been proposed under the provisions of the Michigan constitution. This is perhaps due in part to the restrictions in the method provided; but may also be explained by the fact that the revised Michigan constitution itself met most of the urgent demands for important changes. Efforts have been made to have the legislature submit an amendment, by the older process of a two-thirds vote of each house, for the Oregon plan of direct legislation; but as yet these efforts have not succeeded.

Several other provisions of the revised Michigan constitution extend the scope of direct popular action in political affairs. The municipal home rule provisions authorize the electors of each city and village to frame, adopt and amend its charter; and the home rule law provides for the popular initiative in proposing amendments to home rule charters. Several cities have already adopted new charters under these provisions. Special legislation is restricted; and in any case no special act shall go into effect until approved by the electors in the district to be affected, a referendum which effectively prevents any possible ripper legislation on local affairs. The legislature is also authorized to submit any act to a referendum vote, a procedure previously prevented in the case of general laws by a decision of the supreme court. On the other hand the former requirement of a referendum on banking laws has been omitted as no longer necessary and unduly restrictive.

Further provisions in regard to the printing of bills and reserving to a majority of each house the power to take bills from a committee ensure a wider publicity and more consideration to legislation; and thus give more opportunity for public opinion to influence the work of the legislature.

Moreover, in the provisions for the future revision of the constitutions, any possible attempt on the part of a legislature to control and limit the revision is prevented. When a constitutional convention has been authorized by a vote of the electors, the election of delegates, the meeting of the convention and the submission of its work to the final vote of the electors are fully authorized without further action by the legislature.

Finally the revised constitution makes some provision to secure wider publicity for proposed constitutional amendments when submitted to popular vote. Formerly such amendments were voted on ballots which gave only a vague mention of the subject of the section to be amended, usually with no indication as to the nature of the proposed amendment. It is now provided that all proposed amendments must be published in full and posted at each registration and election place; while separate ballots for voting on amendments is made a definite requirement.

In the case of the revised constitution itself further steps were taken to acquaint the voters with the instrument they were to adopt or reject. The address to the people adopted by the convention formed a pamphlet stating briefly the important changes in the new constitution, and also giving in full the new constitution, with a short statement after each section explaining its relation to the old constitution and noting the changes proposed. This address was printed in sufficient numbers for each voter in the state, and was distributed to the voters through the postoffice. By this means every voter was given ample opportunity to learn the nature of the new instrument of government; and this general publicity was an important factor in securing its ratification.

Viewed as a whole, the revised Michigan constitution marks a distinct advance in the newer *forms* of direct popular action; and what is of more importance, by these and other provisions, it greatly enlarges the influence of public opinion on the work of the government. Compared with recent constitutions and constitutional amendments in other states, it may seem conservative, both in substance and in its relative brevity. But it shows real and permanent progress in the direction of present tendencies; and is perhaps a more valuable subject of study, at least in the older states, just because it is less radical than some of the experiments in the younger commonwealths of the American Union.

REFERENDUM VOTES IN MICHIGAN
(Compiled from Michigan Manuals)

Date	MEASURE PROPOSED	Vote For	Vote Against	Vote For and Against	Total Vote at Election (a)	Adopted or Rejected
Nov., 1835	First state constitution.....	6,752	1,374	8,126	8,372	Adopted
Nov., 1850	Second state constitution.....	36,169	9,433	45,602	60,131	Adopted
Nov., 1850	Amendment—Equal suffrage to negroes...	12,840	32,026	44,866	60,131	Rejected
Nov., 1858	General Banking Law.....	41,006	19,865	60,871	121,402	Adopted
Nov., 1860	Amendment—As to banking corporations..	39,954	15,477	75,431	155,027	Adopted
Nov., 1860	Amendment—As to legislative sessions.....	53,152	18,246	71,398	155,027	Adopted
Nov., 1860	Amendment—Eminent domain.....	62,936	8,034	70,990	155,027	Adopted
Nov., 1862	Amendment—Removals from office.....	3,180	1,273	4,453	130,818	Adopted
Nov., 1862	Amendment—As to banks.....	5,067	1,644	6,711	130,818	Adopted
Nov., 1862	Amendment—Regents of the University....	4,363	1,901	6,264	130,818	Adopted
Nov., 1862	Amendment—Elections in upper peninsula..	5,193	1,440	6,533	130,818	Adopted
Nov., 1862	Amendment—Method of revising constitu- tion.....	4,375	1,806	6,181	130,818	Adopted
Nov., 1866	Amendment—As to soldiers voting.....	86,354	13,094	99,448	164,454	Adopted
Nov., 1866	Constitutional convention.....	79,505	28,623	108,128	164,454	Adopted
April, 1868	Revised constitution.....	71,733	110,582	182,315	182,315(b)	Rejected
April, 1868	Amendment—Annual sessions of legisla- ture.....	24,482	100,314	124,796	182,315	Rejected
Nov., 1870	Amendment—Prohibition of liquor traffic....	72,462	86,143	158,605	182,315	Rejected
Nov., 1870	Amendment—Boards of supervisors' powers..	39,180	61,904	101,084	186,277	Rejected
Nov., 1870	Amendment—Salaries of state officers.....	36,109	68,912	105,021	186,277	Rejected
Nov., 1870	Amendment—"Impartial suffrage".....	54,105	50,598	104,703	186,277	Adopted
Nov., 1870	Amendment—Regulation of railroad rates....	78,602	51,397	129,999	186,277	Adopted
Nov., 1870	Amendment—Restricting railroad consolida- tions.....	76,912	51,194	128,106	186,277	Adopted
Nov., 1870	Amendment—Railroad aid bonds.....	50,078	78,453	128,531	186,277	Rejected
Nov., 1872	Amendment—Railroad aid bonds.....	44,684	70,893	125,577	222,511	Rejected
Nov., 1872	Amendment—Judicial circuits.....	47,972	65,848	113,820	222,511	Rejected

REFERENDUM VOTES IN MICHIGAN—(Continued)

Date	MEASURE PROPOSED	Vote For	Vote Against	Vote For and Against	Total Vote at Election (a)	Adopted or Rejected
Nov., 1872	Amendment—Salaries of circuit judges.	57,326	58,987	116,323	222,511	Rejected
Nov., 1874	Amendment—Woman suffrage.	40,077	135,957	176,034	221,006	Rejected
Nov., 1874	Revised constitution.	39,285	124,034	163,319	221,006	Rejected
Nov., 1876	Amendment—Liquor license.	60,639	52,561	113,200	316,808	Adopted
Nov., 1876	Amendment—Salaries of circuit judges.	65,371	65,966	131,037	316,808	Rejected
Nov., 1876	Amendment—Time of submitting amendments.					
April, 1878	Amendment—Clerk of supreme court.	52,306	21,984	74,290	316,808	Adopted
April, 1878	Amendment—Corporation stockholders liability.	30,313	34,712	65,025	66,834(b)	Rejected
April, 1880	Amendment—Salary of governor.	24,770	42,064	66,834	66,834(b)	Rejected
Nov., 1880	Amendment—Detroit river bridge or tunnel.	49,035	91,753	140,788	140,788(b)	Rejected
April, 1881	Amendment—Penal fines for libraries and schools.	37,340	58,040	95,380	349,034	Rejected
April, 1881	Amendment—Clerks of courts.	51,475	8,370	59,845		Adopted
April, 1881	Amendment—Circuit courts.	62,593	6,640	69,233		Adopted
Nov., 1882	Amendment—Salaries of circuit judges.	53,840	6,628	60,468		Adopted
Nov., 1882	Amendment—Boards of county auditors.	85,705	55,638	141,341	314,719(c)	Adopted
Nov., 1882	Constitutional convention.	23,814	38,073	61,887	314,719	Rejected
Nov., 1882	Amendment—Salaries of circuit judges.	20,937	35,123	56,060	314,719	Rejected
Nov., 1884	Amendment—Compensation to legislators.	35,345	28,642	63,987	410,348	Adopted
Nov., 1884	Amendment—Wayne county board of auditors.	31,693	52,707	84,400	410,348	Rejected
Nov., 1886	Amendment—Salaries of state officers.	15,020	20,755	35,775	380,885	Rejected
Nov., 1886	Amendment—Liquor traffic.	40,445	60,220	100,665	380,885	Rejected
April, 1887	Amendment—Salaries of state officers.	178,636	184,281	362,917		Rejected
April, 1887	Amendment—Circuit courts.	72,718	124,838	197,556		Rejected
Nov., 1888	General banking law.	21,221	19,382	40,603	474,777	Adopted
Nov., 1888	Amendment—Circuit courts.	48,531	20,300	68,831	474,777	Adopted
April, 1889	Amendment—Duration of corporations.	49,478	19,834	69,312		Adopted
April, 1889		35,269	28,950	64,219		Rejected

April, 1889	Amendment—Salary of governor.....	111,854	72,494	184,348	.....	Adopted
Nov., 1890	Constitutional convention.....	16,431	26,261	42,692	398,655(c)	Rejected
April, 1891	Amendment—Salary of attorney-general.....	69,248	69,651	138,899	.....	Rejected
Nov., 1892	Constitutional convention.....	16,948	16,245	33,193	468,637	Failed (d)
April, 1893	Amendment—Salaries of state officers.....	59,317	70,772	130,089	.....	Rejected
April, 1893	Amendment—Internal improvements.....	72,745	52,476	125,221	.....	Adopted
April, 1893	Amendment—Jurisdiction of circuit courts.....	62,023	48,797	110,820	.....	Adopted
April, 1893	Amendment—Highway commissioners.....	69,050	59,922	128,972	.....	Adopted
Nov., 1894	Amendment—Voting rights.....	127,758	29,607	157,365	416,988	Adopted
Nov., 1894	Amendment—Qualifications of electors.....	117,088	31,537	148,625	416,988	Adopted
April, 1895	Amendment—Salaries of state officers.....	50,065	139,039	189,104	.....	Rejected
April, 1895	Amendment—Circuit courts.....	60,567	92,278	152,845	.....	Rejected
April, 1897	Amendment—Salary of attorney-general.....	70,138	90,973	161,111	394,805	Rejected
April, 1897	Amendment—Kent county board of auditors.....	53,201	57,793	110,994	394,805	Rejected
Nov., 1898	Constitutional convention.....	162,163	127,147	289,310	421,164	Failed (d)
April, 1899	Amendment—Improvement of highways.....	130,416	93,442	223,858	400,187	Adopted
April, 1899	Amendment—Additional circuit judges.....	108,197	104,884	213,081	400,187	Adopted
April, 1899	Amendment—Intermediate courts.....	99,391	102,269	201,660	400,187	Rejected
April, 1899	Amendment—State printing office.....	105,711	108,317	214,028	400,187	Rejected
Nov., 1900	Amendment—Taxation of corporations.....	442,728	54,757	497,485	548,214	Adopted
April, 1901	Amendment—Compensation of legislature.....	112,883	187,615	300,498	377,324	Rejected
April, 1901	Amendment—Additional circuit judges.....	110,855	130,108	240,963	377,324	Rejected
Nov., 1902	Amendment—Publication of general laws.....	155,837	105,241	261,078	402,226	Adopted
Nov., 1902	Amendment—Indeterminate sentence.....	146,265	78,338	224,603	402,226	Adopted
April, 1903	Amendment—Payment of circuit judges.....	105,618	83,048	188,666	368,375	Adopted
April, 1903	Amendment—Boards of county auditors.....	108,889	84,636	193,525	368,375	Adopted
Nov., 1904	Constitutional convention.....	165,123	120,018	285,141	524,721	Failed (d)
Nov., 1904	Amendment—Introduction of bills.....	180,157	98,657	278,814	524,721	Adopted
April, 1905	Amendment—Public wagon roads.....	205,750	63,506	269,256	389,231	Adopted
April, 1905	Amendment—Genesee county board of auditors.....	94,860	64,825	159,685	389,231	Adopted
April, 1905	Amendment—Compensation of circuit judges.....	91,994	63,590	155,584	389,231	Adopted
April, 1906	Constitutional convention.....	196,780	127,189	323,969	323,969(b)	Adopted
April, 1907	Amendment—Compensation of circuit judges.....	94,585	61,550	156,135	356,157	Adopted

REFERENDUM VOTES IN MICHIGAN—(Continued)

Date	MEASURE PROPOSED	Vote For	Vote Against	Vote For and Against	Total Vote at Election (a)	Adopted or Rejected
April, 1907	Amendment—Boards of county auditors....	98,259	62,008	160,267	356,157	Adopted
April, 1907	Amendment—Against teaching convicts cer- tain trades.....	167,163	84,831	215,994	356,157	Adopted
Nov., 1908	Amendment—Taxation of corporations.....	227,899	137,500	365,399	541,767	Adopted
Nov., 1908	Revised constitution.....	244,705	130,783	375,488	541,767	Adopted

(a) Usually vote for governor or supreme court judges.

(b) No state officers elected.

(c) Michigan Manual 1907, p. 383.

(d) Majority of all voting at the election required.